REMARKS

This Response is submitted in reply to the Office Action dated November 24, 2009. No claims have been amended. Terminal Disclaimers are submitted herewith. Please charge deposit account number 02-1818 to cover the cost of any fees due in connection with these Terminal Disclaimers and this Response.

The Office Action rejected Claims 1 to 59 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1 to 47 of U.S. Patent No. 6,506,118. For purposes of advancing the prosecution of this application, Applicant has elected to overcome such rejection through the enclosed Terminal Disclaimer. Such election shall not be deemed an admission as to the propriety or accuracy of the Office Action's conclusions or rejections.

The Office Action rejected Claims 1 to 59 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1 to 26 of U.S. Patent No. 6,793,579. For purposes of advancing the prosecution of this application, Applicant has elected to overcome such rejection through the enclosed Terminal Disclaimer. Such election shall not be deemed an admission as to the propriety or accuracy of the Office Action's conclusions or rejections.

The Office Action rejected Claims 1 to 59 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1 to 22 of U.S. Patent No. 6,796,905. For purposes of advancing the prosecution of this application, Applicant has elected to overcome such rejection through the enclosed Terminal Disclaimer. Such election shall not be deemed an admission as to the propriety or accuracy of the Office Action's conclusions or rejections.

The Office Action rejected Claims 1 to 59 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1 to 53 of U.S. Patent No. 7,192,349. For purposes of advancing the prosecution of this application, Applicant has elected to overcome such rejection through the enclosed Terminal Disclaimer. Such election shall not be deemed an admission as to the propriety or accuracy of the Office Action's conclusions or rejections.

If Examiner believes that any additional Terminal Disclaimers are required in view of U.S. Patent No. 6,506,118, Applicant respectfully requests that the Examiner contact the undersigned.

The Office Action rejected Claims 1 to 59 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,506,118 to Baerlocher et al. ("Baerlocher").

Applicant has elected, without prejudice, to disqualify Baerlocher from being used in such rejection in accordance with 35 U.S.C. §102(e). 35 U.S.C. §102(e) sets forth the following:

> [a] person shall be entitled to a patent unless the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language. (emphasis added)

MPEP 716.10, Example 1 sets forth:

> [d]uring the search the examiner finds a reference fully describing the claimed invention. The applicant is the author or patentee and it was published or patented less than one year prior to the filing date of the application. The reference cannot be used against applicant since it does not satisfy the 1-year time requirement of 35 U.S.C. 102(b). (emphasis added)

Additionally, MPEP 706.02(a)(II)(B) sets forth:

> [i]n order to apply a reference under 35 U.S.C. 102(e), the inventive entity of the application must be different than that of the reference. Note that, where there are joint inventors, only one inventor *>needs to< be different for the inventive entities to be different and a rejection under 35 U.S.C. 102(e) is applicable even if there are some inventors in common between the application and the reference. (emphasis added)

Applicant submits that the claimed subject matter of the present application was developed by inventors Gregg J. Palmer, Joseph E. Kaminkow and Anthony J. Baerlocher. Applicant further submits that the subject matter of Baerlocher was

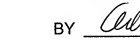
developed by the same inventors, Anthony J. Baerlocher, Joseph E. Kaminkow and Gregg J. Palmer. That is, both the present application and Baerlocher were developed by the same inventors, and thus the same inventive entity. Thus, Baerlocher is not an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent. Moreover, Baerlocher is not a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent. Accordingly, Baerlocher does not qualify as prior art under 35 U.S.C. §102(e).

Applicant respectfully submits that Baerlocher is thus disqualified as prior art pursuant to 35 U.S.C. §102(e). Accordingly, Applicant respectfully requests that the claim rejections under 35 U.S.C. §102(e) be withdrawn and Claims 1 to 59 be allowed.

An earnest endeavor has been made to place this application in condition for formal allowance and in the absence of more pertinent art such action is courteously solicited. If the Examiner has any questions regarding this Response, Applicant respectfully requests that the Examiner contact the undersigned.

Respectfully submitted,

K&L Gates LLP

BY 

Adam H. Masia
Reg. No. 35,602
Customer No. 29159

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